Supreme Court, U.S.
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No. ____

In The

Supreme Court of the United States

October Term, 1994

ABDI A. SHEIK-ABDI,

Petitioner,

vs.

MARTIN E. McCLELLAN, STERLON BREWER, WILLIAM AKERS, and JOE WAZNY, in their individual capacities only,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Under *Payton v. New York* and subsequent precedents, may officers, having lawfully gained entry to a residence for non-law enforcement purposes, effect a warantless arrest on probable cause, developed after entry, that the resident-arrestee had earlier committed a misdemeanor absent exigent circumstances?

2. May probable cause justifying arrest exist on the basis of a reliable report of facts and inferences reasonably drawn therefrom which by themselves do not constitute any offense defined by the polity and where information immediately available would show no offense was committed?

3. May a person, consistently with his liberties secured by the Fourth Amendment and the Due Process Clause, be forced by public paramedical officers to submit to hospitalization for intoxication within his home where the person is "alert and conscious" and comprehensibly refuses hospitalization and hospitalization is, as a medical fact, demonstrably unnecessary?

PARTIES IN THE COURT BELOW

Petitioner, Abdi A. Sheik-Abdi, was the Plaintiff-Appellant in the court below. Respondents Martin E. McClellan, Sterlon Brewer, William Akers, and Joe Wazny, in their individual capacities only, were the Defendants-Appellees below.

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2 LaFave, *Search and Seizure: A Treatise on the Fourth Amendment*, §6.1 (2d Ed. 1987) .. 11, 12, 13, 14

OPINIONS BELOW

The opinion of the court of appeals (App. A, *infra*, 1a-22a) is not yet reported. The opinion and order of the district court (Mihm, Ch. J.) (App. B, *infra*, 23a-37a), is not reported.

JURISDICTION

The judgment of the court of appeals (App. C, *infra*, 38a), was entered October 14, 1994. Petitioner filed a timely Petition for Rehearing which was denied November 10, 1994, App D, *infra*, 39a. This Petition for Certiorari is being brought within 90 days of the court of appeals' denial of the Petition for Rehearing. Petitioner invokes this Court's jurisdiction under 28 U.S.C. §1254(1).

CONSTITUTIONAL, STATUTORY AND OTHER PROVISIONS INVOLVED

A. United States Constitution, Amendment IV.

> "The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

B. United States Constitution, Amendment XIV, §1.

> "No state shall . . . deprive any person of life, liberty, or property without due process of law . . . ".

C. 720 ILCS 5/12-3.

> "Battery. (a) A person commits battery if he intentionally or knowingly without legal justification and by any means, (1) causes bodily harm to an individual or (2) makes physical contact of an insulting or provoking nature with an individual."
>
> "(b) Sentence. Battery is a Class A misdemeanor."

D. 42 U.S.C. §1983

> "Every person who, under color of any statute, ordinance, regulation, custom, or usage of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . . ".

STATEMENT OF THE CASE

Petitioner sued Respondents, Macomb, Illinois police officers Martin McClellan, Joe Wazny, and Sterlon Brewer and McDonough District Hospital paramedic William

Akers[1] under 42 U.S.C. §1983. He alleged a deprivation of liberty secured him by the Fourth Amendment and the Due Process Clause of the Fourteenth Amendment deriving from his warrantless arrest from his home for simple battery as defined by 720 ILCS 5/12-3(a)(2), *supra*. Petitioner invoked the district court's jurisdiction under 28 U.S.C. §§1331 and 1343.

On cross motions for summary judgment, the district court granted summary judgment to all the Respondents and against the Petitioner. The court of appeals affirmed, holding (i) that once police officers had lawfully gained entry into a private residence for non-law enforcement purposes, they were justified in arresting an occupant for a previously committed misdemeanor on the basis of probable cause developed after entry; (ii) that probable cause to arrest for misdemeanor battery as defined by Illinois law, p. 2, *supra*, existed on the basis of Akers' reliable report to police officer McClellan that Petitioner had struck his wife; and (iii) that this Court's precedents such as *Washington v. Harper*, 494 U.S. 210 (1990), and *Cruzan v. Director of Missouri Health Department*, 497 U.S. 261 (1990), establishing a liberty interest in freedom from unwanted medical treatment did not apply where medical treatment was never in fact administered.

The summary judgment record showed[2] that on April 2, 1990, Petitioner, formerly an assistant professor at

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[1] McDonough District Hospital (hospital) is located in Macomb, Illinois, and is, under Illinois law, a municipal corporation, 70 ILCS §910/15.

[2] Petitioner adopts, with minor exceptions, the summary judgment record as recited by the court of appeals, App. A, *infra*, 1a-5a. Where Petitioner adds to the court of appeals'

Western Illinois University in Macomb, Illinois, arrived home from his office shortly after 4:00 p.m. after he had completed a manuscript on which he had been working for 17 years.[3] Petitioner celebrated by drinking cognac which caused him within minutes to fall asleep on a couch in his den. Petitioner's wife, Zeinab, discovered Petitioner and noticed that his eyes were closed and he did not appear to be breathing. She unsuccessfully attempted to rouse him and when unable to do so, placed him on the floor, telephoned the hospital at 4:15 p.m. and advised that her husband had become unconscious after drinking and requested emergency help. Hospital Paramedics, William Hagler and Respondent Akers, arrived at Petitioner's home at 4:26 p.m. CA. 232, 331A. Zeinab admitted the paramedics to the house, and directed them to the den where they found Petitioner awake but glassy eyed. The paramedics identified themselves and attempted to take Petitioner's vital signs but were unable to do so, as he stood up, waved his arms, and ordered them from his house.

Because Akers perceived Petitioner to be "belligerent and uncooperative" and fearing the development of an "unpredictable situation", he directed Hagler to call the police department for assistance.[4] Hagler telephoned the

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recitation, he makes specific reference to his appendix in the court of appeals by the designation "CA" and the page number.

[3] Petitioner's manuscript was published as his first book entitled, "Divine Madness: Mohammed Abdulle Hassan", Zed Books, Ltd., London, England, 1993.

[4] The court of appeals noted at 3a, n.1, *infra*, that "McDonough District Hospital had adopted a policy with regard to the interaction between ambulance and law enforcement personnel [which provided],

police from the ambulance and Respondents McClellan and Wazny arrived at Petitioner's home in separate squad cars at 4:32 p.m. where Hagler admitted them and advised that a man inside was "possibly combative".

The officers went into the kitchen area where Petitioner was on his feet with Zeinab holding one of his arms and Respondent Akers holding the other. Upon seeing the police officers, Petitioner became verbally abusive and ordered the police officers and the paramedics out of his house. At that time Akers advised Officer McClellan that while Hagler was calling the police, he had observed Petitioner strike Zeinab by shoving her with his forearm when she helped him stand up. It was not Akers' intent to report the commission of a criminal offense. CA. 70A.

'if an emotionally disturbed patient is encountered, ambulance personnel should not jeopardize their own safety. Utilize police personnel in these situations to assist with patient control.' "

The policy permitted the paramedics to call the police, but did not require them to do so. CA. 207-209, 239.

In addition, the 5'5", 150 lb. Akers ordered the 6'7", 275 lb. Hagler to leave the residence and summon the police, leaving Akers to deal with the 5'7", 147 lb. Petitioner. CA. 253, 35, 65, 242-244, 253, 261, 328-329, 838. All Akers perceived was wrong with Petitioner was that he was intoxicated, CA. 44-45, and was ordering the paramedics out of his house. CA. 23-24, 46. The paramedics did not, as they could have and routinely do even with intoxicated people, present a "Refusal of Treatment" form to Petitioner. CA. 81-82, 265, 267. They also saw no need to use cloth or leather restraints on him. CA. 26-28, 233. In addition, the 6'7", 275 lb. Hagler had no doubt about his ability to physically restrain the petitioner. CA. 328-329, 838.

The officers did not question Akers, Zeinab, or Petitioner respecting the alleged striking. Rather, Officer McClellan advised Petitioner that he could "go to the hospital or to jail." In response to that choice, Petitioner, after looking at McClellan's name tag, called him "Irish scum", CA. 60-62, 270-271, and, according to McClellan, cocked his arm.[5] McClellan placed Petitioner in handcuffs and under arrest for battery to Zeinab[6] and directed Wazny to take him to McClellan's squad car. Zeinab said the only problem with her husband was his intoxication and pleaded with McClellan not to take Petitioner to jail.

McClellan did not take Petitioner directly to jail. Instead, he drove him to the hospital where Akers and Hagler noted Petitioner was "alert and conscious". McClellan removed the handcuffs and attempted to place Petitioner on a cot, but Petitioner resisted, striking McClellan's arm with a backhanded swipe. McClellan then rehandcuffed Petitioner and took him to the county jail, thus precluding Petitioner from receiving even medical observation.[7]

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[5] McClellan is proud of his Irish ancestry. CA. 387. To McClellan, Petitioner's calling him "Irish scum" showed Petitioner's state of mind. *Id.*

[6] See 720 ILCS 5/12-3(a)(2), p. 2, *supra*.

[7] Hagler and Akers understood that McClellan's rehandcuffing Petitioner and taking him from the hospital to jail precluded him from receiving the medical attention they had been summoned to provide. CA. 76-79, 292. They had not requested that Petitioner be handcuffed and did not understand why it happened. CA. 63-65, 294-295. However, they did nothing to stop McClellan. CA. 76-79, 294.

After McClellan jailed Petitioner, he directed that Petitioner be charged by a criminal information with battery, not to Zeinab for which McClellan had arrested him, but rather to McClellan. CA. 114. Petitioner remained in jail for 24 hours when he posted bail. Several weeks after Petitioner's release, McClellan dismissed the battery charge.

REASONS FOR GRANTING THE WRIT

A.

The Decision Below, Permitting a Warrantless Arrest in a Residence Based on Lawful Entry for Non-Law Enforcement Purposes and Subsequently Developed Probable Cause to Believe a Misdemeanor Had Been Committed, Directly Conflicts with *Payton v. New York* and Succeeding Precedents on an Important and Recurring Question Concerning the Scope of the Warrant Requirement.

The Seventh Circuit's unprecedented opinion has diminished the bright line rule established by this Court making "presumptively unreasonable" seizures of individuals from their homes without a warrant or probable cause and exigent circumstances. In so doing, the lower court has violated what this Court has construed and enforced as the Fourth Amendment's deeply rooted common law antecedents.[8] The court of appeals has,

[8] "The poorest man may in his cottage bid defiance to all the forces of the Crown. It may be frail; its roof may shake; the wind may blow through it; the storm may enter; the rain may enter; but the King of

therefore, weakened the protections of a tenet fundamental to our heritage as a people.

The Fourth Amendment protects "the right of the people to be secure in their persons [and] houses . . . against unreasonable . . . seizures." To secure compliance with that command, this Court held in *Payton v. New York*, 445 U.S. 573 (1980), that a person could "not be arrested in his house without an arrest warrant, even though there is probable cause to arrest him." *Minnesota v. Olson*, 495 U.S. 91, 95 (1990). Thus, since *Payton, supra*, it has been " 'a basic principle of Fourth Amendment law[]' that . . . seizures inside a home without a warrant are presumptively unreasonable." *Welsh v. Wisconsin*, 466 U.S. 740, 749 (1984), quoting *Payton, supra*, 445 U.S. at 586.

However, the Court in *Payton* recognized an exception to the "presumptively unreasonable" rule by permitting warrantless seizures where both probable cause and exigent circumstances are present. *Payton, supra*, 445 U.S. at 586. But, the Court made clear in *Welsh, supra*, that "exceptions to the warrant requirement are 'few in number and carefully delineated (citation omitted), and . . . the police bear a heavy burden when attempting to demonstrate an urgent need that might justify warrantless arrest.' " *Welsh, supra*, 466 U.S. at 749-750. Thus, in *Welsh*, the Court held exigent circumstances justifying a

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England cannot enter all his force dares not cross the threshold of the ruined tenement!"

Miller v. United States, 357 U.S. 301, 307 (1958) (remarks attributed to William Pitt, during parliamentary debate of March, 1763). See *Payton v. New York*, 445 U.S. 573, 590-598 (1980), and accompanying notes.

warrantless arrest did not exist where police pursued a suspect whom they had probable cause to believe guilty of drunken driving after the suspect had retreated to the sanctity of his home.

This Court said in *Welsh* that even though "hot pursuit" might be an exigent circumstance were a felony involved, see *United States v. Santana*, 427 U.S. 38, 42-43 (1976), police must nevertheless be "hesitant" to find exigent circumstances when warrantless arrests in the home are at issue. *Welsh, supra*, 466 U.S. at 749-750. The Court said the "hesitancy" "is particularly appropriate when the underlying offense for which there is probable cause to arrest is relatively minor." *Id.* Thus, "[w]hen the government's interest is only to arrest for a minor offense, [the] presumption of unreasonableness is difficult to rebut, and the government usually should be allowed to make such arrests only with a warrant issued upon probable cause by a neutral and detached magistrate." *Id.*, 466 U.S. at 750. Otherwise, a warrantless seizure for a minor offense " 'displays a shocking lack of all sense of proportion.' " *Id.* at 751, quoting *McDonald v. United States*, 335 U.S. 451, 459-460 (1948) (Jackson, J., concurring).[9]

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[9] Although disclaiming any reliance on "exigent circumstances", the court below seemed to find an alternative justification for the seizure of petitioner by virtue of his "belligerent and agitated state hurling verbal abuse in [the officers'] direction." App. A, 16a, *infra*. It seems beyond question that the petitioner was constitutionally protected to the extent he "hurl[ed] verbal abuse" at the police officers. *Houston v. Hill*, 482 U.S. 451, 462 (1986).

Officers may gain entry to a residence by means other than a warrant on probable cause or probable cause and exigent circumstances under *Payton*. For example, administrative warrants may issue on something less than probable cause for enforcement of such as health and safety regulations. *Camara v. Municipal Court*, 387 U.S. 523 (1967). But, the Court has enforced the *Payton* "presumptively unreasonable" rule in the administrative warrant context by holding such warrants do not permit searches or seizures unrelated to the purpose of that warrant or if the purpose, after entry, changes to a law enforcement one. *Michigan v. Tyler*, 436 U.S. 499, 512 (1978); *Michigan v. Clifford*, 464 U.S. 287 (1984).[10]

Additionally, officers may lawfully gain entrance to a residence, even for law enforcement purposes, by consent. *Payton, supra*. But, officers' authority inside the residence "must be 'strictly circumscribed by the exigencies which justif[ied] [their gaining entrance]' ", *Mincey v. Arizona*, 437 U.S. 385, 393 (1978), quoting *Terry v. Ohio*, 392 U.S. 1, 25-26 (1968). Thus, officers "taking action, unrelated to the objectives of the authorized intrusion . . . produce a new invasion of . . . privacy unjustified by the . . . circumstances validating the entry." *Arizona v.*

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[10] In *Michigan v. Tyler, supra*, the Court held that entry into premises without a warrant after a fire permitted only to the extent necessary to determine the cause of the fire but not permitted if the purpose changed to a law enforcement one in which case a "traditional showing of probable cause" required; *Michigan v. Clifford, supra*, 464 U.S. at 297-298 (1984), held that if the purpose of state officers authorized to conduct an administrative search in a residence into cause of fire changes to search for evidence of arson, probable cause and a warrant required.

Hicks, 480 U.S. 321, 325 (1987). Therefore, "[i]f the scope of the [seizure] exceeds that permitted by the terms of the validly issued warrant or the character of the relevant exception to the warrant requirement, the [seizure] is unconstitutional without more." *Horton v. California*, 496 U.S. 128, 140 (1990).

One "relevant exception" is the "plain view" doctrine, permitting seizures "[w]here the initial intrusion . . . brings the police within plain view of . . . [evidence of a crime]". *Coolidge v. New Hampshire*, 403 U.S. 443, 465 (1971).[11] However, there cannot be "plain view" justifying a warrantless seizure based on information an individual committed a misdemeanor prior to officers lawfully gaining entrance whereby they did not "plainly" see the event. *Horton, supra*, 496 U.S. at 137.

The court below relied upon Professor LaFave in 2 *Search and Seizure: A Treatise on the Fourth Amendment*, §6.1 at 585 (2d Ed. 1987), for the proposition that this Court's requirement of a warrant went only to the legality of entry into Petitioner's home, not to the legality of the arrest once lawfully in the home. Quoting LaFave, *supra*, the court said, "there is no general requirement that arrests be made with a warrant, and an arrest within premises is no 'more threatening or humiliating than a street arrest'. . . . " Accordingly, the court below held that

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[11] As the Court held in *Horton v. California, supra*, 496 U.S. at 133-137, two conditions justifying seizure in "plain view" must be satisfied, "the object's incriminating character must be 'immediately apparent' and the officers must have a lawful right of access to the object."

the warrant requirement in *Payton* springs from " 'the . . . unauthorized entry and not the arrest' ". App. A, 11a, quoting LaFave, *supra*.

The court below misconstrued Professor LaFave. The Fourth Amendment textually guarantees, "the right of people to be secure in their . . . houses." Thus, under *Payton*, if entry is gained without a warrant but with probable cause and on some other lawful basis such as consent, any search or seizure which ensues must be consistent with that lawful basis or consent. *Id.; Arizona v. Hicks, supra; Horton v. California, supra.* Professor LaFave is explicit on that point and contrary to the point for which the court below cited him:

> "If the entry of the premises was obtained on some other lawful basis [besides a warrant] then the *Payton-Steagald (v. U.S.*, 451 U.S. 204 (1981)) warrant requirement is inapplicable to an arrest thereafter made – *provided it is accomplished without exceeding the permissible scope of that entry.*"

2 LaFave, *supra*, §6.1(c) at 581. (Emphasis supplied).

The point of Professor LaFave's passage relied upon by the court below is not to the contrary. If officers gain entry to a residence with probable cause and consent or exigent circumstances, their authority to arrest does not dissipate if they act within the scope of that authorization even if they might not have contemplated the specific search or seizure they effect. *Horton, supra*, 496 U.S. at 140; *Arizona v. Hicks, supra*, 480 U.S. at 325; *Chimel v. California*, 395 U.S. 752 (1969). Similarly, if officers gain entry on some other basis such as an administrative warrant or consent unrelated to law enforcement purposes,

they may act within the scope of the authority pursuant to which they gained entry. *Michigan v. Tyler, supra.*[12]

The Court of Appeals' decision construes *Payton* as making the "invaded place," not the individual's

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[12] That point is demonstrated by the cases relied upon by the court of appeals in addition to LaFave for its position. For example, in *United States v. Briley*, 726 F.2d 1301, 1308 (8th Cir. 1994), the officers had probable cause to arrest for bank robbery and, incident to that probable cause and consent given for entry into Briley's residence, arrested Briley pursuant to the consent given. The arrest was, therefore, within the scope of the consent by which the officers lawfully gained entry. To the same effect is *United States v. White*, 660 F.2d 1178, 1182-1183 (7th Cir. 1981), where the officers gained entry and made a warrantless arrest posing as drug purchasers pursuant to an ongoing investigation where they had probable cause to believe they would be able to make a drug purchase from the defendant into whose residence they gained entry.

Thus, Petitioner assumes that if a search warrant is issued on probable cause to believe a particular person has committed a criminal offense with respect to items to be seized and that person is found within the premises searched at the time the warrant is executed, he may be arrested. See *Jones v. City of Denver*, 854 F.2d 1206, 1209 (10th Cir. 1988), (search warrant which allowed officers to gain entry authorized "a greater intrusion than that supporting the issuance of an arrest warrant"); *United States v. Price*, 888 F.2d 1206, 1208-1209 (7th Cir. 1989), (issuance of search warrant provided probable cause to arrest defendant in his residence.) LaFave supports that view, saying that "a warrantless arrest within premises is permissible when the prior entry was gained by executing a search warrant for physical evidence." LaFave, supra, §6.1(d) at 585. However, LaFave stresses that "it is essential that the presence of the police at the very time and place of the arrest be consistent with the entry authority relied upon." *Id.*

"legitimate claim of privacy in the invaded place," sacrosanct.[13] *Minnesota v. Olson, supra,* 495 U.S. at 95, quoting *Rakos v. Illinois,* 439 U.S. 128, 143 (1978). That is contrary to the text of the Fourth Amendment itself. It is contrary to this Court's holdings in and after *Payton* that action by officers "unrelated to the objectives of the authorized intrusion . . . produce[s] a new invasion of . . . privacy unjustified by the . . . circumstances validating the entry", *Hicks, supra,* 480 U.S. at 325, and is "unconstitutional without more." *Horton, supra,* 496 U.S. at 140; LaFave, *supra* at 581.[14]

Nevertheless, the Seventh Circuit's decision is clear and based on a fair presentation of the summary judgment record. It presents a useful framework for analysis. Therefore, it is well suited to enable this Court to correct

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[13] By analogy to *Welsh v. Wisconsin, supra,* if a felony is reported, the circumstance might be different, particularly if the felony is of a type reasonably suggesting to officers the potential for commission of other criminal offenses, flight, destruction of evidence, harm to witnesses, etc., in which circumstances, a warrant might not be required.

[14] Had the officers done, as required in *Johnson v. United States,* 333 U.S. 10, 13-14 (1951), ("the point of the Fourth Amendment . . . consists in requiring that those [usual] inferences be drawn by a neutral and detached magistrate instead of being judged by an officer engaged in the often competitive enterprise of ferreting out crime"), and repaired to a neutral magistrate, they would have had to report that Zeinab had not been injured and claimed that she had not been hit and, therefore, could not have been "insulted" or "provoked". Under those circumstances, a magistrate could not have lawfully issued a warrant for the arrest of Petitioner. *Malley v. Briggs,* 475 U.S. 335, 345-46 (1986).

what appears to be a lower court decision in direct conflict with this Court's Fourth Amendment jurisprudence.

B.

The Decision Below, Permitting a Warrantless Arrest in a Residence Based on Lawful Entry for Non-Law Enforcement Purposes and Subsequently Developed Probable Cause to Believe a Misdemeanor Had Been Committed, Directly Conflicts with Recent Decisions of the Sixth and Ninth Circuits on the Scope of the Warrant Requirement Under *Payton v. New York*.

The decision of the court below is in direct conflict with the Sixth Circuit's decision in *United States v. Johnson*, 22 F.3d 674 (6th Cir. 1994), and the Ninth Circuit's in *Alexander v. City and County of San Francisco*, 29 F.3d 1355 (9th Cir. 1994).[15] Both cases held that once validly inside a residence for purposes other than to effect a seizure based on probable cause, state officials cannot take action unrelated to or in excess of the authority by which they lawfully gained entry without a warrant.

In *United States v. Johnson, supra*, Detroit police informed Federal ATF agents that they had seized guns from defendant's home and the government prosecuted. The officers had gained entry to defendant's home by responding to a call that a woman was being held against her will. That call, the court held, presented an emergency situation, permitting entry "justified by the need to free a victim. . . ." *Johnson, supra*, 22 F.3d at 680. Once the officers

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[15] A Petition for Rehearing in *Alexander* was denied August 17, 1994. A Petition for Certiorari in *Alexander* is now pending in this Court *sub nom Lennon v. Alexander*, No. 94-876.

were inside, the victim advised of guns the defendant kept in a closet. The officers looked, found, and seized the guns. The district court denied a motion to suppress on the basis of exigent circumstances. The Sixth Circuit reversed, saying, "[o]nce the police had freed [the detained woman], the police had ample time to secure the premises *and to obtain a search warrant." Id.* (Emphasis supplied). The seizure of the guns in *Johnson, supra,* stands in the same stead as the seizure of Petitioner in this case. The conflict between *Johnson* and this case is explicit.

In *Alexander,* a §1983 action brought by plaintiff as representative of the estate of one Quade, public health officials and police officers, secured an administrative "Forcible Entry Inspection Warrant" pursuant to California law. California law authorized the issuance of such a warrant

> "where facts are shown sufficient to create a reasonable suspicion of a violation of a state or local law or regulation relating to building, fire, safety, plumbing, electrical, health, labor, or zoning . . . and [where] facts are shown establishing that reasonable attempts to serve a previous warrant have been unsuccessful."

Cal. Code Civ. P., §1822.56, quoted from *Alexander, supra,* 29 F.3d at 1358. Pursuant to the warrant, officers forcibly entered Quade's house and killed him after he refused to drop a gun he was holding and fired at the officers.[16]

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[16] The seizure in *Alexander* consisted of the officers returning Quade's fire and causing his death. *Tennessee v. Garner,* 471 U.S. 1, 9 (1985) (use of deadly force against a suspect is a seizure within the meaning of the Fourth Amendment.)

The court in *Alexander* held that officers, legally in Quade's residence, 29 F.3d at 1361, n.5, and facing his armed response, had no authority to seize either by arrest or deadly force, even in self-defense.[17] Rather, they were obliged to seek what would have been a third warrant for the purposes of arresting Quade:

> "we are not persuaded by Judge Trott's argument that the officers' purpose was immaterial because the inspection warrant gave them authority to search the house from top to bottom, and hence the scope of the warrant could not be exceeded. The warrant did not give the officers the authority to *arrest* Quade. The forcible entry warrant cannot cure the *Payton* violation, and to suggest that it can is circular."

Alexander, supra, 29 F.3d at 1362 n.5.[18] (Emphasis in original).

The decision below that "once an officer has lawfully entered the premises . . . the Constitution does not

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[17] Once lawfully inside Quade's residence, the officers were confronted with Quade's commission of at least two criminal offenses in their presence. See Cal. Penal Code, §417(c) (West Supp. 1994) (felony to knowingly confront with a firearm a uniformed police officer performing his/her official duties); Cal. Penal Code, §245(a)-(b) (felony to commit assault with a deadly weapon).

[18] The Ninth Circuit, said this Court " 'has repeatedly emphasized the importance of keeping criminal investigatory motives from coloring administrative searches.' " *Alexander, supra*, 29 F.3d at 1361. The Ninth Circuit further said that this Court had "ma[de] . . . clear that an administrative search may not be converted into an instrument which serves the very different needs of law enforcement officials." *Alexander, supra*, 29 F.3d at 1361, citing *Michigan v. Clifford, supra.*

require that he obtain a warrant before affecting [sic] an otherwise lawful arrest within," App. A, 10a, *infra*, is thus contrary to *Alexander*. *Alexander* holds that the Constitution does so require.[19]

Accordingly, the decision below is in direct conflict with the prevailing law of the Sixth and Ninth Circuits on whether lawful entry into a residence for purposes other than seizure permits a warrantless seizure on probable cause developed after entry that a misdemeanor had been committed.[20] The decision below – that no warrant is needed – is straightforward and presents a useful framework for analysis. It permits this Court to provide meaningful guidance on an important question, the scope of the warrant requirement in *Payton v. New York, supra*.

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[19] Petitioner submits the result in Alexander goes too far. He submits that the officers in *Alexander* were justified in effecting a seizure (even by deadly force) because once validly inside Quade's residence, Quade committed a felony in their presence. In that respect, Judge Trott's dissent seems compelling.

By analogy to *Welsh v. Wisconsin, supra*, and *Mincey v. Arizona*, 437 U.S. 385, 393 (1978), Petitioner submits that had he committed a crime in "plain view" of the officers, an emergency or exigent circumstance might have been presented justifying officers validly in his residence in seizing him. On that basis, and subject to the restrictions of *Tennessee v. Garner, supra*, the officers' action in *Alexander* seem appropriate. Thus, while the Ninth Circuit in *Alexander* reached a result not just directly contrary to the result reached by the Seventh Circuit below, it reached a result Petitioner does not urge upon this Court.

[20] The Eighth Circuit's decision in *Mahlberg v. Mentzer*, 968 F.2d 772, 774-775 (8th Cir. 1992), appears to be in accord with the decision below.

C.

The Seventh Circuit's Holding Permits a Finding of Probable Cause from a Reliable Report of Facts and Inferences Reasonably Drawn Therefrom not Amounting to Any Criminal Offense as Defined by the Polity Thereby Diluting the Probable Cause Threshold to One of Suspicion Directly Contrary to this Court's Precedents and the Prevailing View of the Fifth Circuit.

1.

The Decision Below, Dilutes the Probable Cause Standard to One of Suspicion Contrary to this Court's Precedents.

> " 'The substance of all definitions' of probable cause 'is a reasonable ground for belief of guilt' . . . [a]nd, this 'means less than evidence which would justify condemnation' or conviction. . . . Probable cause exists where 'the facts and circumstances within their [the officers'] knowledge, and of which they had reasonably trustworthy information, [are] sufficient in themselves to warrant a man of reasonable caution in the belief that' an offense has been or is being committed. . . . "

Brinegar v. United States, 338 U.S. 160, 175-176 (1949). As explained in *Brinegar, supra,* "[t]hese long prevailing standards seek to safeguard citizens from rash and unreasonable interferences with privacy and from unfounded charges of crime." *Id.* at 176.

In *Illinois v. Gates,* 462 U.S. 213, 230 (1983), the Court elaborated that probable cause is a "common sense" standard that should be judged according to the totality of the circumstances. The Court said, "[p]robable cause is a fluid concept – turning the assessments of probabilities in

particular factual contexts – not readily, or even usefully, reduced to a neat set of legal rules." *Id.* at 232.

It "is basic that an arrest . . . must stand upon firmer ground than mere suspicion . . . , though the arresting officer need not have in hand evidence which would suffice to convict." *Wong Sun v. United States*, 371 U.S. 471, 479 (1963). But, "[t]he quantum of information which constitutes probable cause – evidence which would 'warrant a man of reasonable caution in the belief' that a[n] [offense] has been committed . . . must be measured by the facts of the particular case." *Id.* Nevertheless, "[t]he history of the use, and not infrequent abuse, of power to arrest cautions that a relaxation of the fundamental requirements of probable cause would 'leave law abiding citizens at the mercy of the officers' whim or caprice.' " *Id.*

Central to the foregoing long established law relative to the existence of probable cause for an arrest is a reasonable belief that a crime as defined by the relevant jurisdiction has been committed. *Bordenkircher v. Hayes*, 434 U.S. 357, 364 (1978).[21] The Court has never attempted

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[21] Applying that standard, courts properly evaluate probable cause "not on the facts as an omniscient observer would perceive them but on facts as they would have appeared to a reasonable person in the position of the arresting officer – seeing what he saw, hearing what he heard." *Mahoney v. Kesery*, 976 F.2d 1054, 1057 (7th Cir. 1992). Thus, "[p]robable cause – the area between bare suspicion and virtual certainty – describes not a point but a zone," *Llaguno v. Mingey*, 763 F.2d 1560, 1565 (7th Cir. 1985) (en banc), within which reasonable mistakes will be excused. *Brinegar, supra*, 338 U.S. at 176. The Seventh Circuit has consistently, and, it seems correctly, held that "[w]hen an officer

a rule as to the quantum of evidence required for probable cause and this case does not require one. Yet, it is clear the omission or distortion of material facts critical to the probable cause determination will defeat probable cause. *See Franks v. Delaware*, 438 U.S. 154 (1977).[22] It is further clear an officer is subject to §1983 liability if he arrests where no reasonably competent officer could have thought he had probable cause. *Malley v. Briggs*, 475 U.S. 335, 345 (1986); *Hunter v. Bryant*, 502 U.S. 224, ___ (1991).

Misdemeanor battery under Illinois law occurs where a person "makes physical contact of an insulting or provoking nature with an individual." 720 ILCS 5/12-3(a)(2).[23] Thus, a complaining witness who later recants she was even struck precludes there being any substantive proof of physical contact of an "insulting or provocative" nature. *People v. Sullivan*, 234 Ill.App.3d 328, 332 (2d Dist. 1992). A federal court is bound by a state's highest appellate court's interpretation of the state's own law. *Hicks v. Feiock*, 485 U.S. 624, 630 (1988). Accordingly, under Illinois law an uninvited touching of one person by another, without more, is not a criminal offense.

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has 'received his information from some person – normally the putative victim or an eyewitness – who it seems reasonable to believe is telling the truth', he has probable cause". *Grimm v. Churchill*, 932 F.2d 674, 675 (7th Cir. 1991); *Gerald M. v. Connelly*, 858 F.2d 378, 381 (7th Cir. 1988).

[22] See also *Olson v. Tyler*, 771 F.2d 277, 281 n.5 (7th Cir. 1985); *Hale v. Fish*, 899 F.2d 390, 400 and n.3 (5th Cir. 1990); *DeLoach v. Beavers*, 922 F.2d 618, 622-23 (10th Cir. 1990).

[23] There is no suggestion in this case that probable cause existed under the "injury" prong of the Illinois battery statute, 720 ILCS 5/12-3(a)(1), p. 2, *supra*.

In this case, Akers' reporting that Petitioner had struck his wife without more did not state a criminal offense defined by Illinois law. 720 ILCS 5/12-3(a)(2); *People v. Sullivan, supra,* 234 Ill.App.3d at 332. Akers did not report any facts giving rise to probable cause that an offense had been committed.[24] By finding probable cause, the lower court disregarded this Court's precedents and permitted an arrest on no more than suspicion which, at most, required additional inquiry.

2.

The Seventh Circuit's Decision is in Direct Conflict with the Fifth Circuit.

In *Bigford v. Taylor,* 834 F.2d 1213 (5th Cir. 1988), the Fifth Circuit held that where plaintiff was discovered with his car without appropriate identification stickers and apparent alteration of the vehicle identification number in violation of Texas law, probable cause to seize the vehicle or the plaintiff did not exist. The court so held even though the purpose of Texas law respecting identification stickers and vehicle identification numbers

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[24] Had Zeinab reported she was touched by Petitioner, it could be inferred she was provoked or insulted. If Akers had reported that Petitioner had struck Zeinab and Zeinab appeared to be upset, without corroboration from Zeinab, such report probably would have given the officers probable cause. Had Akers reported that Petitioner struck Zeinab without characterizing her reaction but rather giving other facts from which an inference of insult or provocation might be drawn such as a description of the power of the blow, the fact that she was knocked down, fell against a wall, or cried, the report would likely have given rise to probable cause.

"[was] to stop the purchase and sale of stolen vehicles." *Id.* at 1218-1219. Rather, the court said those violations, without more, "provided at most a basis for further investigation." *Id.* at 1219.[25]

There is no means of reconciling the approach of the court in *Bigford* with that of the Seventh Circuit in this case short of a decision by this Court. The issue involved, immunity of individuals from arrest without probable cause, is so fundamental that the conflicting approaches of the Fifth and Seventh Circuits should be reconciled by this Court.

D.

The Seventh Circuit's Decision Permitting Petitioner to be Forced to Submit to Hospitalization Is in Direct Conflict with *Jacobson v. Massachusetts* and Succeeding Precedents.

In *Jacobson v. Massachusetts*, 197 U.S. 11, 24-30 (1905), this Court held that a competent individual outside government custody could not be treated against his or her will as a matter of constitutionally protected liberty. That basic principle has remained unchallenged and, indeed, has been applied, with various reservations, to persons in

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[25] Petitioner does not urge a per se rule requiring investigation. Nevertheless, in *Illinois v. Gates, supra*, 462 U.S. at 242, this Court has emphasized the importance of "the probative value of corroborative efforts of police officials . . . " in establishing probable cause. In *Gates, supra*, the Court relied on *Draper v. United States*, 358 U.S. 307 (1959), as "the classic case" supporting that view. In this case, had McClellan inquired of individuals immediately available to him, he would have realized no battery had been committed.

government custody.[26] The basic principle of *Jacobson, supra,* has been reaffirmed in a distinguished line of precedents. See *O'Connor v. Donaldson,* 422 U.S. 563 (1975); *Addington v. Texas,* 441 U.S. 418, 425 (1979); *Foucha v. Louisiana,* 504 U.S. ___, 118 L.Ed.2d 437, 447 (1992); *Cruzan v. Director of Missouri Health Department,* 497 U.S. 261, 278-79 (1990).

The court of appeals held that Petitioner had not established a right under the foregoing authorities because he never "received any medical treatment, either from the paramedics or from anyone at the hospital." App. A, 20a, *infra.* That holding elides the real cause of Petitioner's arrest and jailing. The whole purpose of the paramedics' actions, as the record reflects they freely acknowledged, was to cause Petitioner to submit to hospitalization for observation. It was to assist them in effecting that mission that they called the police resulting not in the hospitalization of Petitioner, but his jailing. Had the paramedics not attempted to force Petitioner's hospitalization, contrary to his rights as established by this Court's precedents, this case would not have happened.

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[26] *See Youngberg v. Romero,* 457 U.S. 307, 320 (1982) (recently retarded adult had liberty interest in safety and freedom from bodily restraint); *Parham v. J.R.,* 442 U.S. 584, 600 (1979) (mentally disturbed child has substantial liberty interest in not being confined unnecessarily for medical treatment); *Vitek v. Jones,* 445 U.S. 480, 494 (1980) (transfer of person to mental hospital with mandatory behavior modification implicated constitutionally protected liberty interest); *Washington v. Harper,* 494 U.S. 210, 222-23 (1990) (prisoner already confined has liberty interest in avoiding unwarranted administration of antipsychotic drugs).

E.

The Issues Presented in This Case are Important, Recurring, and Their Resolution Made Uncertain by the Decision Below Thereby Meriting This Court's Consideration.

The issues presented in this case "lie[ ] at the intersection", *Heck v. Humphrey*, ___ U.S. ___, 129 L.Ed.2d 383, 390 (1994), of three venerable lines of authority bearing upon individual liberty: the Fourth Amendment warrant requirement, the Fourth Amendment probable cause requirement, and individual liberty secured by due process from unwanted medical treatment. The decision below, misapplying this Court's precedents, has injected uncertainty into the scope of the warrant requirement, the evidentiary threshold sufficient to the probable cause determination, and the liberty of an individual not in government custody to refuse unwanted and unwarranted medical treatment. At best, the decision below ratifies official conduct, " 'display[ing] a shocking lack of all sense of proportion.' " *Welsh v. Wisconsin, supra*, 466 U.S. at 751, quoting *McDonald v. United States, supra*, 335 U.S. at 459-460.

The decision below is likely to invite a diversity of conflicting judicial approaches with resulting disparate interpretations dependent upon geography. That is an inappropriate criterion for issues so fundamentally bearing upon individual liberty and privacy. The issues presented in this petition, therefore, merit this Court's consideration.

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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APPENDIX A

In the
United States Court of Appeals
For the Seventh Circuit

No. 93-3356

ABDI A. SHEIK-ABDI,

Plaintiff-Appellant

v.

MARTIN E. MCCLELLAN, et al.,

Defendants-Appellees.

Appeal from the United States District Court for the Central District of Illinois, Peoria Division.
No. 92 C 1150 – **Michael M. Mihm,** *Chief Judge.*

ARGUED MAY 12, 1994 – DECIDED OCTOBER 14, 1994

Before ESCHBACH, FLAUM, and RIPPLE, *Circuit Judges.*

FLAUM, *Circuit Judge.* Abdi Sheik-Abdi filed suit under 42 U.S.C. § 1983 against three Macomb, Illinois, police officers and a McDonough District Hospital paramedic alleging that they unlawfully arrested and confined him in violation of his Fourth and Fourteenth Amendment rights. The district court denied Sheik-Abdi's cross-motion for summary judgment and granted summary judgment for all of the defendants. We affirm.

I.

On April 2, 1990 Abdi Sheik-Abdi, an assistant professor at Western Illinois University, arrived home from work shortly after 4:00 p.m. after putting the finishing touches on a manuscript on which he had been working for 17 years. In celebration of his achievement, Sheik-Abdi began imbibing cognac. Within half an hour, Sheik-Abdi had lapsed into an insomnolent state on the couch in the den where he was discovered by his wife, Zeinab, who noticed that his eyes were closed and he did not appear to be breathing. After unsuccessfully attempting to rouse her husband, Zeinab telephone McDonough District Hospital. She advised the switchboard that her husband had become unconscious after a bout of drinking and requested that an ambulance be dispatched to their residence.

Paramedics William Hagler and William Akers responded to the call and arrived at the Sheik-Abdi's home within minutes. Zeinab Sheik-Abdi answered the door, admitted the paramedics to the house, and directed them to the den where they encountered Abdi Sheik-Abdi, lying on the floor glassy-eyed. Hagler and Akers identified themselves and attempted to take Sheik-Abdi's vital signs, but were unable to do so as Sheik-Abdi stood up, waved his arms, and ordered the paramedics out of his house.

Akers and Hagler then retreated to the kitchen where they discussed the situation. Perceiving Sheik-Abdi to be "belligerent and uncooperative," and fearing the development of an "unpredictable situation," the paramedics

decided to call the police department for assistance.[1] Hagler telephoned the police from the ambulance, and Officers Martin McClellan and Joseph Wazny soon arrived in separate squad cars to assist the paramedics with what they perceived to be a "domestic situation." Hagler allowed the officers into the house and advised them that a man inside had been drinking and was possibly combative. When the police ventured into the kitchen area, Sheik-Abdi was on his feet, with his wife holding one of his arms and Akers holding the other. Upon seeing the police officers, Sheik-Abdi became verbally abusive. At that time Akers informed the police that he had observed Sheik-Abdi strike Zeinab in the chest while Hagler was in the ambulance contacting the police. According to Akers, this striking occurred when Zeinab had taken hold of Sheik-Abdi's arm and he shoved her with a forearm in attempting to get free.

Upon hearing Akers' report, the officers declined to further question either Akers or Zeinab Sheik-Abdi with respect to the alleged striking. Instead, after several attempts to persuade Sheik-Abdi to go to the hospital. McClellan offered him the choice of going to the hospital or to jail. Sheik-Abdi continued his verbal abuse, and, according to McClellan, cocked his arm when his wife attempted to cover him with a robe. At this point, McClellan placed Sheik-Abdi in handcuffs. Wazny then

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[1] McDonough District Hospital had adopted a policy with regard to the interaction between ambulance and law enforcement personnel. That policy provided in relevant part: "If an emotionally disturbed patient is encountered, ambulance personnel should not jeopardize their own safety. Utilize police personnel in these situations to assist with patient control."

escorted Sheik-Abdi to McClellan's squad car as Zeinab denied that her husband had struck her and pleaded with McClellan not to take him to jail.

Sheik-Abdi did not go directly to jail; rather, McClellan drove him to the hospital. Upon arrival, the paramedics noted that Sheik-Abdi was "alert and conscious." McClellan put Sheik-Abdi in a wheelchair and transported him to a holding area known as the "trauma bay." After removing the handcuffs, McClellan attempted to place Sheik-Abdi on a cot, but Sheik-Abdi resisted, striking the officer's arm with a backhanded swipe. At that point, McClellan recuffed Sheik-Abdi, took him back to the squad car, and carted him off to jail before any medical treatment could be rendered. An information attested to by Officer Sterlon Brewer charged Sheik-Abdi with having "intentionally caused bodily harm to Martin McClellan in that he struck McClellan in the arm with his fist, and did then and there commit the offense of batter in violation of [Illinois law]." Sheik-Abdi was released about twenty-four hours later and the charges against him were dropped weeks later at McClellan's request.

Abdi Sheik-Abdi brought suit under 42 U.S.C. § 1983, alleging that Officers McClellan, Wazny, and Brewer and Paramedic Akers violated his constitutional rights under the Fourth and Fourteenth Amendments. Specifically, Sheik-Abdi charged that the defendants unlawfully seized him from his home without a warrant or probable cause to believe that he had committed a crime and illegally subjected him to summary punishment without due process. The defendants moved for summary judgment, arguing first that Sheik-Abdi had failed to state a claim of constitutional violation, and, alternatively, that

they were entitled to qualified immunity. Officer Brewer also asserted that he could not be held liable under § 1983 because he had not personally participated in the arrest. Sheik-Abdi filed a cross motion for summary judgment on the liability issues.

The district court granted summary judgment for all of the defendants and denied Sheik-Abdi's cross motion. The district court found that exigent circumstances justified the officers' entry into the home and probable cause supported their decision to arrest Sheik-Abdi for battery on the basis of the paramedic's statement that Sheik-Abdi had struck his wife. Even if probable cause had not existed, the court noted that the officers would be entitled to qualified immunity. The court also found that Sheik-Abdi had failed to state a claim against Brewer, who had no connection to the arrest, or against Akers, who acted reasonably in calling for police assistance and who had no authority to intervene in the officers' decision to arrest Sheik-Abdi. Finally, the court concluded that Sheik-Abdi had failed to state a claim against any defendant for summary punishment.[2]

II.

We review the grant of summary judgment *de novo*, drawing all reasonable inferences from the record in the light most favorable to the non-moving party. *Jean v. Dugan*, 20 F.3d 255, 259 (7th Cir. 1994). To affirm, we must find that no genuine issue of material fact exists and that

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[2] Sheik-Abdi does not appeal the grant of summary judgment on his summary punishment claim.

the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c).

A.

We turn first to Sheik-Abdi's claim that Officers McClellan and Wazny unlawfully seized him from his home in violation of the Fourth Amendment when they arrested him. The district court apparently treated the officers' warrantless entry and arrest as a single episode and found that both probable cause and exigent circumstances supported the officers' actions. On appeal, Sheik-Abdi disputes the existence of probable cause on several grounds, including the officers' failure to investigate the charge on the scene. Alternatively, Sheik-Abdi contends that even if the paramedic's report was sufficient to create probable cause, the officers' decision to arrest still was improper because a minor offense such as battery does not give rise to the required exigent circumstances to effectuate a home arrest without a warrant.

1.

Allegations of unlawful arrests in the home ordinarily call for separate determinations of the propriety of the initial entry into the home and the subsequent arrest. In this case, we note as an initial matter that Sheik-Abdi apparently misapprehends the applicability of exigent circumstances, a concept that is relevant only to whether the officers had authority to *enter* the premises *for the purpose of arrest or seizure, see, e.g. Welsh v. Wisconsin*, 466 U.S. 740, 748 (1984), not to whether they could arrest someone once lawfully inside for some other reason. The

Supreme Court consistently has emphasized "the overriding respect for the sanctity of the home that has been embedded in our traditions since the origins of the Republic," because the home, more than any other location "provide[s] the setting for those most intimate activities that the Amendment is intended to shelter from government interference or surveillance" *Oliver v. United States*, 466 U.S. 170, 178-179 (1984) (citation omitted). "The principal protection against unnecessary intrusions into private dwellings is the warrant requirement imposed . . . on agents of the government who seek to enter the home for purposes of search or arrest." *Welsh*, 466 U.S. at 748 (citation omitted); *see also Illinois v. Rodriguez*, 497 U.S. 177, 181 (1990); *Minnesota v. Olsen*, 495 U.S. 91, 100 (1990); *Payton v. New York*, 445 U.S. 573, 583 (1980). Accordingly, when police officers seek to conduct law enforcement activities within the confines of someone's home, they ordinarily must obtain a search warrant prior to conducting a search or an arrest warrant prior to making an arrest. Only "exigent circumstances" – few in number and carefully delineated, *see United States v. Diaz*, 814 F.2d 454, 458 (7th Cir.), *cert. denied*, 484 U.S. 857 (1987) – will justify a warrantless entry into a home for the purpose of making an arrest or effecting a search. *Olsen*, 495 U.S. at 100; *United States v. Berkowitz*, 927 F.2d 1376, 1385 (7th Cir.) ("Generally, police may not enter a person's home to arrest that person without an arrest warrant, unless exigent circumstances exist."), *cert. denied*, 112 S.Ct. 141 (1991).[3]

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[3] In *Olson*, the Court stated that the Minnesota Supreme Court "applied essentially the correct standard in determining

A related, though not identical, line of cases also has recognized that emergency situations sometimes arise and on such occasions a warrantless entry into a home will be appropriate for a purpose other than to arrest a suspect or search for evidence of a crime. *See generally* W. LaFave, 2 Search and Seizure: A Treatise on the Fourth Amendment § 6.6 at 697 (2d ed. 1987). It is clear, for example, that "the Fourth Amendment does not bar police officers from making warrantless entries and searches when they reasonably believe that a person within is in need of immediate aid." *Mincey v. Arizona*, 437 U.S 395, 392-393 (1978); *see also Root v. Gauper*, 438 F.2d 361, 364 (8th Cir. 1971) ("[P]olice officers may enter a dwelling without a warrant to render emergency aid and assistance to a person whom they reasonably believe to be in distress and in need of that assistance."); *Wayne v. United States*, 318 F.2d 205, 212 (D.C. Cir.) (Burger, J.) ("The need to protect or preserve life or avoid serious injury is justification for what would be otherwise illegal absent an exigency or emergency."), *cert. denied*, 375 U.S. 860 (1963). This so-called "emergency doctrine" is an

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whether exigent circumstances existed" to make an arrest. 495 U.S. at 100. The Minnesota High Court observed that a warrantless intrusion could be justified by hot pursuit of a fleeing felon, imminent destruction of evidence, the need to prevent a suspect's escape, or risk of danger to police or to other persons inside or outside a dwelling. *Id.* Prior to *Olson*, we had stated a more generic test for exigent circumstances: "whether the exceedingly strong privacy interest in one's residence is outweighed by the risk that delay will engender injury, distruction of evidence, or escape." *Diaz*, 814 F.2d at 458; *United States v. Acevedo*, 627 F.2d 68, 70 (7th Cir.), *cert. denied*, 449 U.S. 1021 (1980).

exception to the ordinary requirement of a warrant for entry into a home; thus, the burden falls upon the officer to show the existence of an objectively reasonable belief that his intrusion was made to "render assistance or prevent harm to persons or property within." *United States v. Moss*, 963 F.2d 673, 678 (4th Cir. 1992) (citing *Wayne* and *Root*).

Our colleagues on the Fourth Circuit recently explained that the distinction between the aforementioned doctrines appears to be in perceived function of the responding officer: a warrantless entry is analyzed as an "emergency" if purportedly made "incident to the service and protective functions of the police" and as an "exigent circumstance" if allegedly executed in a "law enforcement"capacity. *Moss*, 963 F.2d at 678. Here the officers' initial entry into the Sheik-Abdi's home obviously falls within the former category. They were called by paramedics to facilitate the treatment of a person who apparently had consumed too much alcohol, and they did not learn of any possible criminal activity until after they had entered the home, though one of the paramedics warned that the intoxicated man might be combative. In our view, an emergency warrantless entry was reasonable in these circumstances.[4]

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[4] The undisputed facts establish that one of the paramedics, Hagler, admitted McClellan and Wasny to the home. Though Zeinab Sheik-Abdi never invited the officers into the house, she also did nothing to indicate that she disapproved of their presence. In such circumstances, it may have been reasonable for the officers to believe that Zeinab had consented to their entry. *See Gerald M. v. Conneely*, 858 F.2d 378, 384-385 (7th Cir. 1988) ("[Complainant's] subsequent silence and apparent

As a general matter, we are uncertain whether the circumstances that may give rise to "emergencies" are less circumscribed than those that constitute "exigent circumstances" (the Forth Circuit thought not), but we need not resolve that question today because Sheik-Abdi does not challenge the lawfulness of the officers' presence in his home. Citing *Mincey*, he concedes that while in the home, the officers presumably could have prevented any breach of the peace that occurred or was likely to occur, Br. at 24-25, and could have taken minimal action to restrain Sheik-Abdi so that he could be treated. Rep. Br. at 14. Sheik-Abdi's objection, and the basis of his constitutional claim, is that the scope of the officer's authority to act within the home was limited by the purpose for which they had been admitted – namely, to assist the paramedics in tending to his health needs. However, neither the emergency nor exigent circumstances doctrine have any bearing on this type of claim.

As the foregoing discussion suggests, an unconstitutional entry into the home will vitiate the legitimacy of any search or seizure effected on that occasion because the privacy and solitude of the home are at the core of the Fourth Amendment's protection. *See Soldal v. Cook County, Ill.*, 113 S.Ct. 538, 546 n.10 (1992) (citing *Horton v. California*, 496 U.S. 128, 136-137 (1990)). Once an officer has lawfully entered the premises, however, the Constitution does not require that he obtain a warrant before affecting an otherwise lawful arrest within. *Cf. Diaz*, 814 F.2d at 459 (stating that even in the absence of exigent

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acquiescence persuades us that [the officer's] presence in the home was not against [the complainant's] apparent wishes.").

circumstances, defendant's consent to undercover officer's entry into his hotel room validated subsequent arrest); *Augustine v. Doe*, F.2d 322, 325 (5th Cir. 1984) (stating that consent to entry is assumed to be sufficient to permit warrantless arrest); *United States v. Briley*, 726 F.2d 1301, 1308 (8th Cir. 1984) ("valid and voluntary consent may be followed by a warrantless in-home arrest"); *United States v. White*, 660 F.2d 1178, 1182-1183 (7th Cir. 1981) (stating that consent, even if obtained by deceit, can justify a subsequent warrantless arrest, at least where entry is not obtained solely for the purpose of arresting the suspect); LaFave, *supra* § 6.1(c) at 585 ("no warrant is needed to arrest if there is another lawful basis for the entry."). Professor LaFave has persuasively explained the rationale behind this rule as follows:

> [T]o assume that the warrant requirement really goes to the matter of arrest rather than the matter of entry (a mistake perhaps induced by *Payton's* approval of an arrest warrant rather than a search warrant as sufficient) is *wrong*. Because (i) there is no general requirement that arrests be made with a warrant, and (ii) an arrest within premises is no "more threatening or humiliating than a street arrest," it should be apparent that *Payton* is grounded (as the Court put it) in "the breach of the entrance to an individual's home." That is, it is the otherwise unauthorized entry and not the arrest which gives rise to the warrant requirement.

LaFave, *supra* § 6.1(c) at 584 (footnotes omitted) (emphasis in original); *see also White*, 660 F.2d at 1183 (noting that the warrant requirement serves no purpose "where the same intrusion would occur whether or not

the magistrate issues the warrant."). Once the veil of the home has been legally pierced, we see no need for police officers to turn a blind eye to a crime, so long as the arrest is otherwise effected in compliance with the constitutional requirement of probable cause (and any other relevant state law criteria). At the same time, however, emergencies should not be used pretextually in order to blunt the warrant requirement for home arrests. *Cf. Moss*, 963 F.2d at 678 (noting that an emergency "cannot be used as the occasion for a general voyage of discovery unrelated to the purpose of the entry"); *United States v. Presler*, 610 F.2d 1206, 1211 (4th Cir. 1979) (stating that entry to aid unconscious occupant did not warrant unrelated search and apartment); *United States v. Brand*, 556 F.2d 1312, 1318-1319 (5th Cir. 1977) (noting that proper entry to aid drug overdose victim did not warrant unrelated search of adjacent room, but did make valid discovery of contraband in plain view in victim's room), *cert. denied*, 434 U.S. 1063 (1978).

In this case, there is no suggestion that Officers McClellan and Wazny were searching parts of the house in which they had no reason to be or in some other way were trying to gin up a charge against Sheik-Abdi. After entering the house, the paramedic on the scene notified the officers that he had observed Sheik-Abdi strike his wife in the chest. On the basis of this information, the officers made an arrest for battery. The next (and final) inquiry into whether this arrest comported with the Constitution requires us to ascertain whether the officers had probable cause.

2.

The police have probable cause to arrest an individual when "the facts and circumstances within their knowledge and of which they [have] reasonably trustworthy information [are] sufficient to warrant a prudent [person] in believing that the [suspect] had committed or was committing an offense." *Maxwell v. City of Indianapolis*, 998 F.2d 431, 433 (7th Cir. 1993); *see also Beck v. State of Ohio*, 379 U.S. 89, 91 (1964); *Brinegar v. United States*, 338 U.S. 160, 175-176 (1949). The rule of probable cause has been described as a "practical, nontechnical conception" that accommodates the often competing interests of effective law enforcement and the privacy and liberty of law-abiding citizens. *See Brinegar*, 338 U.S. at 176. The on-the-spot determination often requires an "exercise of judgment, which 'turn[s] on the assessment of probabilities in particular factual contexts – not readily, or even usefully, reduced to a neat set of legal rules.' " *Maxwell*, 998 F.2d at 434 (citing *Illinois v. Gates*. 462 U.S. 213, 232 (1983)). In recognition of the endless scenarios confronting police officers in their daily regimen, courts evaluate probable cause "not on the facts as an omniscient observer would perceive them but on the facts as they would have appeared to a reasonable person *in the position of the arresting officer* – seeing that he saw, hearing what he heard." *Mohoney v. Kesery*, 976 F.2d 1054, 1057 (7th Cir. 1992) (citing *Richardson v. Bonds*, 860 F.2d 1427, 1431 (7th Cir. 1988)). In practice, then, it can be said that "[p]robable cause – the area between bare suspicion and virtual certainty – describes not a point but a zone," *Llaguno v. Mingey*, 763 F.2d 1560, 1565 (7th Cir. 1985) (*en*

banc), within which reasonable mistakes will be excused. *See Brinegar*, 338 U.S. at 176.

When the question of probable cause arises in a damages suit its resolution typically fails within the province of the jury, though a conclusion that probable cause existed as a matter of law is appropriate when there is no room for a difference of opinion concerning the facts or the reasonable inferences to the [sic] drawn from them. *Maxwell*, 998 F.2d at 434; *Gerald M.*, 858 F.2d at 382; *Gramenos v. Jewel Companies, Inc.*, 797 F.2d 432, 438 (7th Cir. 1986), *cert. denied*, 481 U.S. 1028 (1987) ("[W]e hesitate to conclude that 195 years after the fourth amendment was added to the Constitution there must be a jury trial every time the police arrest a person accused by a store guard who says he saw the person shoplifting."). In deciding whether the district court properly resolved this issue on summary judgment, we consider only the facts on which there is no genuine dispute. Akers, a paramedic, told Officers McClellan ad Wazny that he saw Abdi Sheik-Abdi strike his wife with a forearm, pushing her backward a step or two, as she tried to help him to his feet. The officers then encountered Sheik-Abdi, who subjected them to verbal abuse and failed to respond to Officer McClellan's offer of choosing between going to the hospital or to jail. McClellan then arrested Sheik-Abdi and placed him in handcuffs. Wazny then transported Sheik-Abdi to a police vehicle while Zeinab Sheik-Abdi denied that the striking had occurred and pleaded with McClellan not to take her husband to jail. Neither Akers nor Zeinab indicated their intention to file a criminal complaint; the officers did not ask Zeinab to corroborate Akers' allegation; and neither officer was aware of any

prior incidents of domestic abuse at the Sheik-Abdi residence.

Sheik-Abdi contends that Akers' report, by itself, was insufficient to establish probable cause. In view of the officers' failure to further investigate the incident before making the arrest, Sheik-Abdi draws the "inescapable" conclusion that the battery charge was simply a pretext, and that the officers really arrested him in retaliation for his use of the slur "Irish scum", directed at McClellan. We note in passing that even if the officers did have had motives for arresting Sheik-Abdi, the existence of probable cause for an arrest would preclude a § 1983 claim for unlawful arrest, false imprisonment, or malicious prosecution. *Mark v. Furay*, 769 F.2d 1266, 1268-1269 (7th Cir. 1985). We also must bear in mind that whether Sheik-Abdi actually struck his wife (or whether she actually felt provoked or insulted) is not material to the determination of probable cause; the test is an objective one – it is "what the police know, not whether they know the truth, that matters." *Gramenos*, 797 F.2d at 439.

We find that a prudent officer would have believed that probable cause existed to arrest Sheik-Abdi for the crime of battery. Under Illinois law, a batter is committed when a person intentionally or knowingly without legal justification and by any means (1) causes bodily harm to an individual or (2) makes physical contact of an insulting or provocative nature with an individual. 720 ILCS 5/12-3. While everyone agrees that Zeinab Sheik-Abdi bore no contemporary markings of bodily harm, we believe that, in the circumstances, Akers' statement adequately formed the basis of a reasonable belief that an insulting or provocative contact had occurred. This court

has consistently held that "[w]hen an officer has 'received his information from some person – normally the putative victim or an eye witness – who it seems reasonable to believe is telling the truth,' he has probable cause." *Grimm v. Churchill*, 932 F.2d 674, 675 (7th Cir. 1991); *Gerald M.*, 858 F.2d at 381; *see also Jones v. City of Chicago*, 856 F.2d 985, 994 (7th Cir. 1988) (stating that an identification given by a "lucid" victim would establish probable cause); *Gramenos*, 797 F.2d at 439 ("a 'prudent' officer may balk . . . if the person leveling the accusation is babbling or inconsistent.") Though we have suggested that evidence of interviews and investigations may be a relevant factor in a probable cause analysis, *see Simmons*, 9 F.3d at 560; *Gerald M.*, 858 F.2d at 381, it is not in any way a prerequisite to a finding of probable cause. Where there is a lapse of time between the alleged lawbreaking and the arrest, as was the case in *Simmons* and *Gerald M.*, we find it more likely that some type of investigation – for example, the questioning of witnesses – will be appropriate. Here, by contrast, as soon as the officers came upon the scene they were informed that a highly intoxicated man had struck his wife and almost instantaneously encountered the purported assailant in a belligerent and agitated state hurling verbal abuse in their direction. Even in the absence of a blanket rule that the police always may arrest on the basis of a single coherent eyewitness, *see Gramenos*, 797 F.2d at 439, we find that their decision to do so in this case was reasonable. A paramedic responding to a call, like a guard in a supermarket, *see id.*, is "not just any witness," *id.*, and in the usual case the police may reasonably take the paramedic at his word without fear of "being mulcted in damages." *Pierson v. Ray*, 386 U.S. 547,

555 (1967). This is the usual case; Akers was an eyewitness, the facts he related to the officers (if he told the truth) established a crime, and the officers had no reason to disbelieve Akers' statement.[5] The officers' decision to arrest Sheik-Abdi for battery easily falls within the zone of probable cause (and even more easily into the zone of qualified immunity), and the district court properly concluded so on summary judgment.[6]

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[5] Of course, as Judge Easterbrook has stated, the police "may discover, to their dismay, that when they do not conduct an investigation they cannot get a conviction . . . . But the fourth amendment does not define as probable cause whatever good police practice requires, or whatever proves necessary to prevail at trial. . . . Good police practice may require interviews, but the Constitution does not require police to follow the best recommended practices. There is a gap, often a wide one, between the wise and the compulsory. To collapse those two concepts is to put the judicial branch in general superintendence of the daily operation of government, which neither the fourth amendment nor any other part of the Constitution contemplates.

Gramenos, 797 F.2d at 440-442. Indeed, Sheik-Abdi never was formally charged with battery to his wife, and the charges against him for battery to McClellan were dropped at the officer's request.

[6] Because we find that the officers were lawfully within the home and had probable cause to arrest, we do not reach the officers' alternative arguments that probable cause also existed under the Illinois Domestic Violence Act, 750 ILCS 60/301-304.

B.

Sheik-Abdi next contends that Akers is subject to § 1983 liability because he unleashed the chain of events leading to the arrest by inviting the officers to the home, acquiescing in their decision to arrest, and failing to respect Sheik-Abdi's right to refuse medical treatment. This claim is without merit. Section 1983 creates a cause of action based upon personal liability and predicated upon fault; thus, liability does not attach unless the individual defendant caused or participated in a constitutional deprivation. *Wolf-Lillie v. Sonquist*, 699 F.2d 864, 869 (7th Cir. 1983). Akers and his partner Hagler arrived at Sheik-Abdi's residence after receiving a call from his obviously distressed wife reporting that her husband was unconscious. After the paramedics entered the home (with Zeinab Sheik-Abdi's consent) they discovered Abdi Sheik-Abdi in an inebriated and semi-coherent state and attempted to check his vital signs (knowing that his wife had reported that he was found unconscious moments earlier). Sheik-Abdi then struggled to his feet and began cursing and waving his arms at the paramedics. Fearing that a volatile situation might be developing, the paramedics, in accordance with a sensible hospital policy, called for police assistance. We find this course of action eminently reasonable, and we note that Sheik-Abdi cite to no authority suggesting that paramedics need probable cause to believe that a crime has been committed before summoning the police to assist with an emergency situation.[7]

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[7] According to Sheik-Abdi, *Michigan v. Tyler*, 436 U.S. 499 (1978), "make[s] clear that at the point the non-law enforcement

Sheik-Abdi likewise provides no legal support for his argument that Akers had a duty to prevent the police officers from turning a medical mission into a law enforcement situation by arresting Sheik-Abdi. The fact that Akers did not intend to file a criminal complaint or may even have thought the officers' actions unreasonable is of no moment here because, as the district court noted, Akers had no authority to intervene. Acting on the information they received from Akers, the police independently determined that probable cause existed to arrest Sheik-Abdi for battery to his wife. Thus, even if the arrest had been unlawful, Akers would not have been liable as he did not participate in the decision to arrest.

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officer invokes criminal process, which Akers did by directing Hagler to summon the police, he must do so 'only upon a traditional showing of probable cause . . . ' " This argument misapplies *Tyler* and misapprehends the purpose of the paramedics' request for police assistance. *Tyler* stands for the proposition that firefighters may enter a burning building without a warrant and remain within the building to put out the blaze and for a reasonable time thereafter to investigate its cause and to seize any evidence of arson that is in plain view. *Id.* at 509-510. As the Court stated, the warrant procedures governing administrative searches attach only to subsequent entries into the building that are clearly detached in time from the initial exigency. *Id.* at 511. Thus, if *Tyler* applies at all to this case, it supports the defendants by recognizing that emergencies justify warrantless entries and that evidence in plain view may be seized following such an [sic] lawful entry. Furthermore, we do not believe that the paramedics "invoked" the "criminal process" by asking the police to assist in the treatment of an intoxicated and possibly belligerent citizen; the criminal process was invoked in this case by the officers' decision to arrest the plaintiff for battery.

Finally, in view of Sheik-Abdi's erratic behavior, we will not second-guess the soundness of the paramedics' decision to summon the police prior to (or instead of) offering Sheik-Abdi an opportunity to sign a release form indicating his desire not to be treated. Furthermore, we note that there is no allegation, either in the complaint or the record, that Sheik-Abdi ever received any medical treatment, either from the paramedics or from anyone at the hospital. Accordingly, even if the rationales of *Cruzan v. Director of Missouri Health Department*, 497 U.S. 261 (1990) (stating that a competent person has a liberty interest under the Due Process Clause in refusing unwanted medical treatment that must be balanced against relevant state interests and assuming, for purposes of that case, that the Constitution would grant a competent person a protected right to refuse lifesaving hydration and nutrition), and *Washington v. Harper*, 494 U.S. 210 (1990) (establishing a right to a due process hearing before an inmate can be administered psychotropic drugs), could be extended to the circumstances presented here, the fact that no forced treatment is alleged to have actually taken place frees Akers from any potential § 1983 liability.

C.

Finally, Sheik-Abdi claims that his constitutional rights were violated when Officer Brewer signed the complaint charging Sheik-Abdi with aggravated battery even though Brewer had no first-hand knowledge of the facts to which he attested. This claim also is without merit. In a suit under § 1983, the plaintiff must show a violation of the Constitution or laws of the United States, not just a

violation of state law. *Gramenos*, 797 F.2d at 434. Under Illinois law, a prosecution may be commenced by any of three processes: indictment, information, or complaint. 725 ILCS 5/111-2(a)-(c). An information, such as that used in this case, "shall be signed by the state's attorney and sworn to by him or another." 725 ILCS 5/111-3(b). Sheik-Abdi seeks support from *Hurtado v. California*, 110 U.S. 516 (1884), a case in which the Supreme Court held that the initiation of a prosecution for first degree murder on the basis of an information (rather than an indictment) satisfied the Due Process Clause of the Fourteenth Amendment. This rather unremarkable proposition does not advance Sheik-Abdi's cause. Neither *Hurtado*, nor any other principle of federal law, makes a properly attested complaint or information necessary to an arrest or even a criminal prosecution. *SEe Gramenos*, 797 F.2d at 434. Pursuant to department policy, Brewer went to the State's Attorney's Office to sign the complaint against Sheik-Abdi which was typed from information presumably submitted by McClelan while he was still on duty. Whether this policy (or Brewer's execution of it) was lawful is a question of state law. Thus, even if Brewer's filling out of the paperwork associated with McClellan's arrest violated state law, the district court properly granted summary judgment for Brewer on Sheik-Abdi's § 1983 claim.

III.

Where, as here, a defendant has pleaded a defense of qualified immunity, it is appropriate for courts to approach a summary judgment motion using a two-step

analysis: (1) Does the alleged conduct set out a constitutional violation? and (2) Were the constitutional standards clearly established at the time in question? *See Siegert v. Gilley*, 500 U.S. 226, 231-232 (1991); *Donovan v. City of Milwaukee*, 17 F.3d 944, 947 (7th Cir. 1994). As we noted in *Donovan*, a negative answer to the first question conclusively resolves the matter in favor of the defendant. *Id.* On the basis of the foregoing analysis, we conclude that Sheik-Abdi's allegations fail to establish a constitutional violation. Accordingly, the district court's grant of summary judgment for all of the defendants is

AFFIRMED.

A true Copy:

Teste:

/s/ _____
Clerk of the United States Court of
Appeals for the Seventh Circuit

APPENDIX B

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS

ABDI A. SHEIK-ABDI Plaintiff, v. MARTIN E. McCLELLAN, STEVEN BREWER, WILLIAM AKERS, and JOE WAZNY, in their individual capacities only, Defendants.	)	Case No. 92-1150 (Filed Sep. 2, 1993)

ORDER

Pending before the Court is Defendants McClellan, Brewer, and Wazny's Motion for Summary Judgment (#25), Defendant Akers' Motion for Summary Judgment (#29) and Plaintiff's Cross-Motion for Summary Judgment on Liability Issues (#32). For the reasons set forth below, McClellan, Brewer, and Wazny's Motion for Summary Judgment (#25) is granted, Defendant Akers' Motion for Summary Judgment (#29) is granted, and Plaintiff's Cross-Motion for Summary Judgment on Liability Issues (#32) is denied.

FACTUAL BACKGROUND

Plaintiff, Abdi, Sheik-Abdi ("Sheik-Abdi"), a native of Somalia, lives in Macomb, Illinois and works as an Assistant Professor at Western Illinois University. On

April 2, 1990, he arrived home from work in the afternoon and started drinking cognac. Twenty or 30 minutes later, his wife, Zeinab, also a native of Somalia, found her husband unconscious on the couch in their den. She shook her husband and when he did not wake up, she called the hospital and requested an ambulance. Paramedics Akers and Hagler responded to the call. Zeinab answered the door and let the paramedics into her house. Akers identified himself to Sheik-Abdi, who was regaining consciousness at this point, and explained to him that his wife Zeinab had called the hospital. At that time, according to Defendants, Sheik-Abdi became upset, waved his arms, refused to let them take his vital signs, and ordered the paramedics to leave his house.

The paramedics determined that they needed to check his vital signs. However, they were fearful that Sheik-Abdi would become violent. They were also concerned that a potential language barrier might aggravate the situation. Hagler left the house and called from his ambulance for police assistance. Before the police arrived, Sheik-Abdi stood up and attempted to walk toward Akers. He fell over a table or some folding chairs and cut his hand or wrist. According to Akers, Sheik-Abdi then struck Zeinab in the chest when she tried to put a housecoat over his shoulders. However, this fact is disputed by both Sheik-Abdi and his wife.

In response to Hagler's call, Officers McClellan and Wazny arrived in separate squad cars to assist the paramedics with a "domestic situation." Hagler informed the officers that Sheik-Abdi had been drinking and that he was possibly combative. Once inside the house, Akers told the officers that Sheik-Abdi had struck his wife.

Officer McClellan spoke to Sheik-Abdi, and when he believed that Sheik-Abdi was going to strike his wife again, he handcuffed him and placed him under arrest. His wife was very upset and did not want her husband jailed. She expressed concerned about his "alcoholism," and asked that he be taken to the hospital.

Officer McClellan transported Plaintiff to McDonough District Hospital where Sheik-Abdi was placed in a wheelchair and brought into the trauma bay of the emergency room. McClellan removed the handcuffs and together with the emergency room personnel attempted to persuade Sheik-Abdi to sit on a cot so that he could be evaluated by a doctor. Defendants allege that at that point Sheik-Abdi became verbally abusive and profane. When Officer McClellan attempted to "assist" Sheik-Abdi onto the cot, Sheik-Abdi struck him. Although Sheik-Abdi denies hitting McClellan[1], he also admitted not remembering what happened at the hospital due to periods of blackouts after his arrest. McClellan then re-handcuffed Plaintiff and transported him to jail. He was charged with aggravated battery to Officer McClellan. A criminal complaint was prepared and signed by Defendant Officer Brewer. However, the complaint was ultimately dismissed by the State's Attorney's Office.

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[1] *See* Second Amended Complaint, ¶ 17.

DISCUSSION

Police Defendants' Motion for Summary Judgment (#25)

Officers McClellan and Wazny make four arguments in support of their Motion for Summary Judgment. First, they argue that they had probable cause to make the warrantless arrest. The presence of probable cause defeats Sheik-Abdi's false arrest claim under § 1983. *Friedman v. Village of Skokie*, 763 F.2d 236 (7th Cir. 1985). The officers state that they had probable cause when Akers told them that Sheik-Abdi had struck his wife and was combative. When an officer receives information from an eyewitness who he or she reasonably believes is telling the truth, the officer has probable cause. *Gerald M. v. Conneely*, 858 F.2d 378 (7th Cir. 1988); *Gramenos v. Jewel Companies, Inc.*, 797 F.2d 432, 439 (7th Cir. 1986). From the paramedic's statement, Officer McClellan argues that he reasonably believed that Plaintiff had committed battery upon his wife. *See* Ill.Rev.Stat. ch. 38, ¶ 12-3 (1989).

Sheik-Abdi responds that the officers did not have probable cause because Akers' statement that Sheik-Abdi struck his wife did not establish the crime of battery under ch. 38. He argues that ch. 38, § 12-3(a) requires *injury* as well as intentional contact. Because Akers' statement did not convey whether Sheik-Abdi's wife was injured, the statement did not indicate that a crime had been committed. Therefore, Sheik-Abdi contends that it was not reasonable for the officer to rely upon this statement as probable cause that a crime had been committed.

The Court finds Defendants' argument persuasive on this point. The officers could reasonably have relied on Akers' statement in determining that there was probable

cause that Plaintiff battered his wife, specifically under ch. 38, § 12-3(a)(2), which only involves provocative or insulting contact and does not require injury.[2]

In addition to the existence of probable cause, the officers present two alternative arguments in support of their motion. First, the officers argue that they were faced with exigent circumstances due to Plaintiff's combative and potentially violent behavior which put the safety of the family, the paramedics and the Plaintiff himself into question. Second, a warrantless arrest was appropriate under the officers' authority pursuant to the Illinois Domestic Violence Act, Ill.Rev.Stat. ch. 40, ¶ 2313-4(a)(5) (1989), which authorizes officers to make a warrantless arrest in a situation of domestic violence if the officers had probable cause.[3]

Sheik-Abdi responds that the Domestic Violence Act does not provide any authority for the officers since no

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[2] Chapter 38, ¶ 12-3 states: "(a) a person commits battery if he intentionally or knowingly without legal justification and by any means, (1) causes bodily harm to an individual *or* (2) makes physical contact of an insulting or provoking nature with an individual." (Emphasis added).

[3] Section 2313-4, entitled "Assistance by Law Officers," states:

> (a) Whenever a law enforcement official has reason to believe that a person has been abused, neglected, or exploited by a family or household member, the officer shall immediately use all reasonable means to prevent further abuse, neglect, or exploitation, including:
>
> * * *
>
> (5) arresting the abusing, neglecting, or exploiting party where appropriate.

probable cause existed. He also contends that no exigent circumstances existed to justify the arrest. *Welch v. Wisconsin,* 466 U.S. 740, 104 S.Ct. 1291 (1984). In *Welch,* a police invasion of a man's home, after he walked away from an accident which occurred while he was driving under the influence of alcohol, violated his Fourth Amendment rights because exigent circumstances were not present. In *Welch* there was no hot pursuit; there was also no threat to the safety of defendant or the public. *See also, Payton v. New York,* 445 U.S. 573, 100 S.Ct. 1371 (1980); *United States v. Paul,* 808 F.2d 645 (7th Cir. 1986).

The Court finds that, unlike the facts in *Welch, supra,* the necessary exigent circumstances existed in the instant case to justify a warrantless entry and arrest. The record clearly indicates that the paramedics' conduct was motivated by their concern for the safety of all parties involved during what they perceived to be a volatile situation with an intoxicated and combative patient. Furthermore, the paramedics' comments that Sheik-Abdi was intoxicated and potentially combative, and had struck his wife, reasonably creates the probable cause which justifies the assistance by law officers sanctioned by § 2313-4 of the Domestic Violence Act. *Mincey v. Arizona,* 487 U.S. 385, 392, 98 S.Ct. 2408, 2413 (1978).

It is important to note that the dispute of fact regarding whether or not Sheik-Abdi actually struck his wife in Akers' presence is not material to the determination that the officers had probable cause, or that exigent circumstances existed which justified their entry and arrest. To determine whether probable cause was present, the focus is on whether "the facts and circumstances at the time of

the arrest and of which the police had reasonably trustworthy information were sufficient to warrant a prudent person in believing that the arrested person committed . . . an offense." *United States v. Patino*, 862 F.2d 128, 132 (7th Cir. 1988), *cert. denied*, 490 U.S. 1069 (1989). "Probable cause does not depend on the witness turning out to have been right; its what the police know, not whether they know the truth, that matters." *Gramenos v. Jewel Companies, Inc.*, 797 F.2d 432, 439 (7th Cir. 1986), *cert. denied*, 481 U.S. 1028 (1987).

Finally, Defendants argue that, even if they did not have probable cause, they are entitled to qualified immunity. They contend that their actions were reasonable because the medics were in the house and conveyed that they had a patient who was intoxicated and combative, the officers were not told to leave, and they were responding to a call for assistance in a domestic situation. They contend that they reasonably relied upon the paramedic's statement, a paramedic with whom they had worked in the past. According to Defendants, Sheik-Abdi had clearly displayed potentially violent behavior toward his wife, the paramedics and the officers.

The Court has already found that McClellan and Wazny had probable cause to make an arrest. However, even if the Court had determined otherwise, the officers would be entitled to qualified immunity. The Court finds that officers of reasonable competence could at least have disagreed on whether there was probable cause to make an arrest. *Malley v. Briggs*, 475 U.S. 335, 341, 106 S.Ct. 1092 (1986). Furthermore, Sheik-Abdi has failed to show that the officers violated clearly established constitutional precedent on the facts of this case. *Simkunas v. Tardi*, 930

F.2d 1287, 1291 (7th Cir. 1991); *Jones v. City of Chicago*, 856 F.2d 985 (7th Cir. 1988); *Richardson v. Bonds*, 860 F.2d 1427 (7th Cir. 1988).

Next, Officers McClellan and Wazny argue that Plaintiff was not deprived of his right to be free from "summary punishment" under the Fourteenth Amendment. *Bell v. Wolfish*, 441 U.S. 520, 534-37, 99 S.Ct. 1861 (1979). Sheik-Abdi does not allege a violation of *Gerstein v. Pugh*, 420 U.S. 103, 114, 95 S.Ct. 854 (1975), which states that if an officer does not have a warrant, he needs to obtain a certification of probable cause from a magistrate. He does not allege unconstitutional conditions of confinement and actually admits that he was not mistreated by jail officials. *See* Plaintiff's deposition pp. 106-108.

In the context of arguing his "summary punishment" claim, he states that he has a liberty interest in refusing state-imposed treatment, e.g. , being forced to go to the hospital or to jail. Because he was forced to spend 24 hours in the county jail "for no criminal offense whatsoever," he was subjected to punishment without due process of law. However, the cases cited by him in support of his argument involve seriously retarded adults, mentally ill patients committed to institutions, a mentally disturbed child, anti-psychotic drugs being administered to a prisoner, and a persons, right to die once he or she is in a permanent vegetative state. These cases are distinguishable on their facts and do not involve "summary punishment" claims as contemplated in *Bell v. Wolfish, supra.* In that case, inmates brought a class action regarding the constitutionality of numerous conditions of confinement at a federal short-term custodial facility in New York designed primarily to house pretrial detainees. The

Court held that "double bunking" did not deprive detainees of their liberty without due process of law, body cavity searches, a prohibition against receipt of packages, or a room search rule violate any constitutional guarantees. Absent a showing of an express intent to punish, if a particular condition is reasonably related to a legitimate non-punitive governmental objective, it does not, without more, amount to punishment. Furthermore, he was arrested for aggravated battery of Officer McClellan, which *is* a criminal offense.

The Court finds that Plaintiff fails to state a claim for summary punishment pursuant to *Bell v. Wolfish.* He admits that he is not alleging mistreatment by jail officials. He bases his claim on the fact that he was forced to accept treatment and was held in a jail cell for 24 hours without being charged with a crime. Even if the record supports this claim, which it does not, being detained, without more, is not summary punishment. Regarding the claim that he was wrongfully forced to accept treatment, the paramedics were acting according to hospital policy in a situation where they defined the patient as seriously disturbed and a potential threat to those present. While it is not clear from the record specifically to whom they called in their request for police assistance, it is clear that there was a reasonable policy in place by which the paramedics could force treatment upon a patient if they felt it necessary. In the instant case, the paramedics reasonably interpreted the situation to be just that and acted accordingly. This fact distinguishes Sheik-Abdi's situation from that of a competent individual who has a constitutional right to refuse medical treatment. *Cruzan v. Director, Missouri Dept. of Health,* 110 S.Ct. 2841,

2846-47 (1990). Sheik-Abdi has failed to produce any analogous precedent which would suggest that they violated his clearly established constitutional rights by their actions.

Finally, Defendants argue that Plaintiff fails to state a claim against Officer Brewer because he had no participation in the arrest. Merely signing the criminal complaint for aggravated battery upon Officer McClellan does not constitute the basis for a § 1983 claim. *Wolf-Lillie v. Sonquist*, 699 F.2d 864, 869 (7th Cir. 1983) (without a showing of direct responsibility for the improper action, liability will not lie against a supervisory official. A causal connection or an affirmative link between the misconduct complained of and the official suit is necessary); *Gramenos, supra*, 797 F.2d at 434.

Sheik-Abdi states that he was charged by an information attested by Defendant Brewer with "having intentionally caused bodily harm to Martin McClellan in that he struck Martin McClellan in the arm with his fist and did then and there commit the offense of battery in violation of [Illinois] law." Sheik-Abdi contends that Brewer did not see the contact; he did not talk to McClellan about it; he knew nothing of the facts to which he attested. The charge against him was dismissed at McClellan's request several weeks later.

Brewer's deposition testimony clarified that it was department policy for any officer on duty during the day to be reassigned to go over to the State's Attorney's Office and sign the complaint which was typed from the information submitted by the officers on the previous night shift. *See* Brewer's dep., p. 4. Brewer had no

involvement in the incident other than to sign the warrant, said warrant being grounded on the information provided to Brewer by McClellan. There is nothing in this record to suggest that Brewer was on actual or constructive notice that the information given to him by McClellan was not correct in every detail. Such a situation clearly fails to constitute a cause of action against Brewer.

For the reasons stated above, Defendants McClellan, Wazny, and Brewer's Motion for Summary Judgment is granted and Sheik-Abdi's Cross-Motion for Summary Judgment is denied to the extent that it pertains to this Motion.

Defendant Akers' Motion for Summary Judgment (#29)

Akers argues that Sheik-Abdi's complaint fails to state a claim under the Fourth Amendment because the probable cause requirement does not apply to a medical personnel's decision to call the police. He argues that even if Akers negligently contacted the police, there is no claim. *Daniels v. Williams,* 474 U.S. 327, 106 S.Ct. 662, 666 (1986) (the due process clause is not implicated by a state official's negligent act causing unintended loss of or injury to life, liberty or property); *Jones v. Sherrill,* 827 F.2d 1102 (6th Cir. 1987). Furthermore, Akers claims that there was no evidence that he recklessly contacted the police.

Sheik-Abdi responds that the Fourth Amendment applies to any government agent intruding upon plaintiff's home, including school officials, building

inspectors, OSHA personnel, and Defendant Akers. Sheik-Abdi focuses on the right to privacy under the Fourth Amendment rather than the right to be free from unreasonable searches and seizures. *Skinner v. Railway Labor Executives' Ass'n.*, 489 U.S. 602, 613-14, 109 S.Ct. 1402 (1989); *Camara v. Municipal Court of City and County of San Francisco*, 387 U.S. 523, 528, 87 S.Ct. 1727 (1967); *Soldal v. Cook County*, 113 S.Ct. 583, 61 U.S.L.W. 4019, 4022 (1992); *United States v. Berkowitz*, 927 F.2d 1376, 1385 (7th Cir. 1991).

Akers replies that he responded to a call from Sheik-Abdi's wife. Therefore, even if the Fourth Amendment was applicable, Mrs. Sheik-Abdi's request for services constituted consent. *American Postal Workers Union AFL-CIO v. U.S. Postal Service*, 671 F.Supp. 497 (S.D. Ohio 1987). In response to an assertion that Mrs. Sheik-Abdi's consent was limited only to medical treatment of her husband, Akers states that similar arguments have been rejected. *See Frazier v. Cupp*, 394 U.S. 731, 740, 89 S.Ct. 1420 (1969). Under emergency circumstances to protect life, health and property, government officials may engage in Fourth Amendment intrusions without probable cause. *People v. Connolly*, 55 Ill.2d 421, 303 N.E.2d 409 (1973). Akers also distinguishes the cases upon which Sheik-Abdi relies because the individuals in those cases were involved in law enforcement functions (building inspector, OSHA, health and safety inspectors, etc.), unlike a paramedic who is involved in purely medical tasks.

The Court rejects Sheik-Abdi's argument that the scope of Mrs. Sheik-Abdi's consent limited the paramedics to administering medical treatment. It is clear from

the record that they had the authority and discretion to call for police assistance in the event that they felt this assistance was necessary to insure the safety of all parties involved. Secondly, it was entirely reasonable to perceive the incident as an emergency situation.

In the alternative, Akers argues that he did not participate in the arrest and therefore is not liable under § 1983. *Wolf-Lillie v. Sonquist*, 699 F.2d 864, 869 (7th Cir. 1983). Sheik-Abdi responds that Akers' acts and omissions were the proximate cause of his constitutional injuries. Akers made the decision to call the police and did not stop them from arresting Plaintiff and taking him to jail, even though he did not call them with the intent to instigate a criminal charge, but rather only to insure the safety of all parties in case Plaintiff became violent. In other words, Defendants Akers is liable for the series of events which he set in motion. *Malley v. Briggs*, 475 U.S. 335, 344 n. 7 (1986); *Johnson v. Duffey*, 588 F.2d 740, 743 (9th Cir. 1978) ("personal participation is not the only predicate for § 1983 liability. Anyone who "causes" any citizen to be subjected to a constitutional deprivation is also liable.")

The Court finds that the officers acted independently in making the decision to arrest Plaintiff for battery. Even if Akers had tried to intervene, he did not have the authority to do so. An unconstitutional seizure by the officers, if it had taken place, was something not reasonably foreseen or contemplated by Akers when he called for police assistance in a potentially violent situation. Therefore, Akers is not liable under § 1983 for any unlawful consequences of Plaintiff's arrest.

Finally, Akers states that he acted reasonably under the circumstances and deserves qualified immunity. *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S.Ct. 2727, 2738 (1982). He argues that he did not violate any clearly established law, and to deny him qualified immunity would have a chilling effect on emergency response personnel from a policy standpoint.

Sheik-Abdi argues that Akers does not deserve qualified immunity because, in applying an objective standard of analysis, he did not act reasonably under the circumstances. Sheik-Abdi states that the paramedics did not offer him the release form which, if signed, would have indicated his desire not to be treated. They did not utilize the leather and cloth restraints they had in the ambulance to subdue him, nor did they employ their physical strength to overcome him; Hagler was 6'7", 275 pounds and capable of subduing Sheik-Abdi physically. They made the decision to call the police within two to four minutes based on the fact that he was intoxicated, incoherent, and waving his arms. They were also allegedly not authorized to call the police according to a policy manual. He maintains that the paramedics had no reason to believe at that point that any criminal act had taken place and therefore no probable cause existed for calling the police. *See* Plaintiff's brief pp. 21-23.

In their deposition testimony, the paramedics indicate that they had the discretion to use the form, the restraints *or* call the police, given the particular circumstances. They felt in this situation that because of the unpredictability of Plaintiff's behavior and his propensity to be combative, they decided that they needed the assistance of the police to insure the safety of all parties

present and to possibly defuse the situation without violence.

The Court rejects Sheik-Abdi's argument because the hospital policy manual clearly condones calling for police assistance in potentially dangerous situations. The Court finds that Plaintiff has not met his burden of providing clearly established constitutional law which the paramedics clearly violated under the circumstances, even assuming Sheik-Abdi's version of events to be true for purposes of this issue. Therefore, even if Akers were liable under § 1983, he is entitled to qualified immunity. Akers' Motion for Summary Judgment is granted and Sheik-Abdi's Cross-Motion for Summary Judgment is denied as is this Motion.

CONCLUSION

For the reasons set forth above, Defendants McClellan, Wazny, and Brewer's Motion for Summary Judgment (#25) is GRANTED, Defendant Akers' Motion for Summary Judgment (#29) is GRANTED, and Sheik-Abdi's Cross-Motions for Summary Judgment on Liability issues (#32) is DENIED.

ENTERED this 2nd day of September, 1993.

/s/ Michael M. Mihm
Michael M. Mihm
Chief United States District Judge

APPENDIX C

United States Court of Appeals

For The Seventh Circuit

Chicago, Illinois 60604

JUDGMENT – WITH ORAL ARGUMENT

Date: October 14, 1994

BEFORE: **Honorable** JESSE E. ESCHBACH,
Circuit Judge
Honorable JOEL M. FLAUM, Circuit Judge
Honorable KENNETH F. RIPPLE,
Circuit Judge

No. 93-3356

ABDI A. SHEIK-ABDI,
Plaintiff - Appellant

v.

MARTIN M. MCLELLAN, STEVEN BREWER, WILLIAM AKERS, in their individual capacities only, et al.,
Defendants - Appellees

Appeal from the United States District Court for the Central District of Illinois, Peoria Division No. 92 C 1150, Michael M. Mihm, Chief Judge

The judgment of the District Court is AFFIRMED, with costs, in accordance with the decision of this court entered on this date.

(1061-110393)

APPENDIX D

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

November 10, 1994

HON. JESSE E. ESCHBACH, Circuit Judge

HON. JOEL M. FLAUM, Circuit Judge

HON. KENNETH F. RIPPLE, Circuit Judge

ABDI A. SHEIK-ABDI, Plaintiff-Appellant, No. 93-3356 v. MARTIN M. MCLELLAN, STEVEN BREWER, WILLIAM AKERS, in their individual capacities only, et al., Defendants-Appellees.	] Appeal from the United States District Court for the Central District of Illinois, Peoria Division. No. 92 C 1150 Michael M. Mihm, Chief Judge.

ORDER

On consideration of the petition for rehearing filed in the above-entitled cause by plaintiff-appellant, all of the judges on the original panel have voted to deny a rehearing. Accordingly,

IT IS ORDERED that the aforesaid petition for rehearing be, and the same is hereby, DENIED.